

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Civil Action No. 19-7239-VM-SN  
4 ----- )

5 THE PHILLIES, a Pennsylvania  
6 limited partnership,

7 Plaintiff,

8 vs.

9 HARRISON/ERICKSON, INCORPORATED,  
10 a New York corporation, HARRISON  
11 ERICKSON, a partnership, and  
12 WAYDE HARRISON and BONNIE  
13 ERICKSON,

14 Defendants.  
15 ----- )

16 CONFIDENTIAL

17 VIDEOTAPED DEPOSITION OF SCOTT BRANDRETH

18 New York, New York

19 February 28, 2020

20  
21  
22 Reported by:

23 Debra Stevens, RPR-CRR

24 Job No. 177733  
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February 28, 2020

9:34 a.m.

Confidential Videotaped

Deposition of SCOTT BRANDRETH, the  
witness herein, held at the offices  
of Mitchell Silberberg & Knupp, 437  
Madison Avenue, New York, New York,  
before Debra Stevens, a Notary  
Public of the State of New York.

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2 A. Mr. Sapp created the design.

3 Q. Did you give anything to  
4 Mr. Sapp in connection with the creation  
5 of the design?

6 A. That group of us did, yes.

7 Q. And what did you give him?

8 A. Round eyes, big duck butt,  
9 introduction of the powder blue color that  
10 is prominent with The Phillies. We  
11 discussed the shape of the eyelashes, the  
12 color of the shoes. That was all  
13 discussed with the group.

14 Q. When you say you provided him  
15 with that, was that just verbal  
16 communication or did you actually provide  
17 drawings or something different?

18 A. Verbal communication.

19 Q. And how did you come up with  
20 these characteristics that you talked to  
21 him about?

22 A. That group, we just got in a  
23 room and started to have fun.

24 Q. Was Mr. Sapp given any drawings  
25 of the original Phanatic to look at?

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2 A. Yes.

3 Q. Did you keep a record of what  
4 you gave him?

5 A. The designs?

6 Q. Whatever you gave Mr. Sapp in  
7 connection with his creation of the  
8 design.

9 A. Yes.

10 Q. Where is that located?

11 A. My files.

12 Q. And that goes back to when? How  
13 long ago?

14 A. I want to say, like I stated  
15 before, July maybe, possibly sooner. I am  
16 not...

17 Q. I am not asking for an exact  
18 date, but around July 2019?

19 A. Yes, that is my guess.

20 Q. That was after this lawsuit had  
21 been commenced. Yes?

22 A. Yes.

23 MR. MONTCLARE: Counsel, have  
24 those been produced? I don't believe  
25 I have seen them or seen them

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2 identified.

3 MR. WOLFSOHN: You just  
4 requested them a couple days ago.

5 MR. MONTCLARE: They were  
6 requested initially when we asked for  
7 all information relating to  
8 derivatives. This makes this  
9 deposition more difficult, but we'll  
10 continue. I make a request for that.  
11 Please note this request.

12 Q. So, it is in a file in your  
13 office, sir?

14 A. It's in my folder on my  
15 computer.

16 Q. So to produce it, all you have  
17 to do is transmit -- open up the folder  
18 and there it would all be?

19 A. Sure.

20 Q. About how many images or  
21 documents electronically would be stored  
22 in that folder approximately?

23 A. I don't know.

24 Q. Please don't erase any of those,  
25 sir. Understood?

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2 A. Understood.

3 Q. Would there be notes, your notes  
4 relating to this process also appear  
5 somewhere in your files or on your  
6 computer?

7 A. Yes.

8 Q. In the same folder, sir?

9 A. Yes.

10 Q. Would they appear anyplace else,  
11 do you know?

12 A. No.

13 Q. So, if Mr. Sapp did the design,  
14 who actually did the construction of  
15 Phanatic, if you know?

16 A. Randy Carfagno.

17 Q. I meant P2. I am sorry. I  
18 withdraw the question.

19 If Mr. Sapp did the design of  
20 P2, who actually constructed it, if you  
21 know?

22 A. Randy Carfagno.

23 Q. Do you know, is he affiliated  
24 with an organization?

25 A. I don't know.

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2 derivative works that are in this exhibit?

3 A. Not every one of them, for sure.

4 Q. As a general matter, because I  
5 don't want to go through 300 of these.  
6 That would be a waste of time.

7 What kind of records would be in  
8 these folders with regard to each of these  
9 numbered works?

10 MR. WOLFSOHN: Okay.

11 Mischaracterizes his testimony and  
12 vague. You can try to answer.

13 A. An image of the design.

14 Q. And how do you organize them?  
15 Do you name them? How are they actually  
16 organized in your computer? By date? By  
17 name? Some other way?

18 A. Maybe by date, by project.

19 Q. Okay. So let's take a look at  
20 one of them. Look at item 100 on page 34  
21 of the exhibit. What is depicted in the  
22 left-hand column with respect to the  
23 design? What is that?

24 A. That is the P2 design.

25 Q. We started to talk about this.

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2 Where are the records relating to the  
3 development of the P2 design located in  
4 the books and records of The Phillies, if  
5 you know?

6 A. On my computer, or -- mine are  
7 on my computer. I don't know where others  
8 are.

9 Q. And have you turned all of those  
10 documents over to your counsel?

11 A. Yes.

12 Q. If you take a look at the third  
13 column, the only document that was  
14 produced in connection with this is PHAN  
15 0009712. Do you see that?

16 A. Yes.

17 Q. Was there more than one document  
18 in that folder?

19 A. There are variations of that  
20 leading up to this.

21 Q. I am talking about in the entire  
22 folder that relates to 100. Is there only  
23 one document in that computer folder?

24 A. I just answered that. There are  
25 several -- there are several documents



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2 leading up, including this one.

3 Q. And those would just be designs,  
4 two-dimensional designs?

5 A. Yes.

6 Q. Is there anything else in that  
7 folder, any other data or letters or  
8 correspondence or anything like that?

9 A. Yes.

10 MR. MONTCLARE: I asked that  
11 they be produced.

12 Q. Just give me some basic idea.  
13 Can you give me an estimate of how many?  
14 A hundred, two hundred different  
15 documents? Three hundred? How many?

16 A. Relating to?

17 Q. This particular Phanatic design.

18 MR. WOLFSOHN: Objection; vague.  
19 You can answer.

20 A. 100 maybe.

21 Q. I interrupted myself before. We  
22 were talking about the construction of the  
23 costume itself by Mr. Carfagno. Do you  
24 remember that?

25 A. Yes.

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2 Is that really what you want the  
3 impression to be left here?

4 You are just going to stonewall  
5 us and not allow me to get all the  
6 reasons why this particular P2 was  
7 designed and constructed the way it  
8 was? You are instructing him not to  
9 answer those questions? Okay.

10 Q. Why did they change the color of  
11 his socks to be blue?

12 A. They represent the socks that we  
13 wore in 1948. Some of the Phanatic's  
14 favorite old time players wore those.

15 Q. So were you intending to use  
16 this Phanatic, P2, alongside of the  
17 original Phanatic?

18 MR. WOLFSOHN: I am not sure  
19 what that means, but you can answer  
20 it.

21 A. Read it back.

22 (Record read.)

23 A. No.

24 Q. Why not?

25 MR. WOLFSOHN: You can answer to